

September 8, 2008

John Bunyak, Air Resources Division  
National Park Service  
P.O. Box 25287  
Denver, CO 80225

**RE: Federal Land Managers' Air Quality Related Values Work Group (FLAG) – Draft  
FLAG Phase I Report - Revised**

Dear Mr. Bunyak:

The Fond du Lac Band of Lake Superior Chippewa (“the Band”) has reviewed the document referenced above. The Fond du Lac Reservation is located near Cloquet, MN, 20 miles south of Duluth. The Band is glad to see this effort to update the previous version of this guidance document, and to see the emphasis given to insuring consistency among the reviews performed by the various Federal Land Managers (“FLMs”) from the U.S. Forest Service, the National Park Service, and the U.S. Fish and Wildlife Service. National parks and forests in the state of Minnesota (namely the Boundary Waters Canoe Area (“BWCA”) and Voyageur’s National Park (“VNP”)), are of interest to Band members because these lands were traditionally used for hunting, fishing, and gathering, and are also important for cultural and religious reasons. The Band retains usufructory rights in 8 million acres in Northern Minnesota, which were ceded to the United States in the Treaty of 1854, and wants to see these areas protected from environmental degradation. In addition, reservation and ceded lands across the nation often lie within or close to national parks, forests, and monuments, and also deserve to be protected.

The Band feels that, as a whole, the document does not adequately address the trust responsibilities the FLMs have with regard to tribes. While the national parks, forests, and monuments are not necessarily held in trust for tribes, decisions made by FLMs could affect the exercise of tribal usufructory rights in ceded lands and on nearby reservations, and could effect environmental protection efforts undertaken by tribes on nearby reservations. Tribes have shown themselves to be reliable air quality partners through participation in groups like the Central Regional Air Planning Association and the Western Regional Air Partnership, and through their work with state agencies and the EPA. Throughout the document, references are made to FLM consultations with States and the EPA in setting critical load values and in other situations – we believe that tribes should be consulted in these situations, as well. The document also fails to note that tribes can be FLMs, in the case of Class I redesignation of tribal lands. There may be instances where FLMs from the federal agencies listed above need to interact with tribal FLMs in reviewing certain projects.

Page 18 of the draft guidance discusses the Criteria for Decision Making, and defines “adverse impact on visibility”. The definition mentions correlation of impairment with times of visitor use. The Band does not believe this is an appropriate factor for consideration. 36 CFR Part 800 Protection of Historic Properties, Subpart B – the Section 106 Process, defines “adverse effects” in section 800.5 (a)(2)(iv) and (v) as including: “Change of the character of the property’s use or of physical features within the property’s setting that contribute to its historical significance” and “Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property’s significant historical features”. Inasmuch as any of the lands in the national forests, parks and monuments are considered “historic properties”, these rules apply, no matter how many visitors are in the park at any given time.

Page 35 of the document discusses Emissions Input aspects of the visibility impact analysis and attempts to clarify the use of 24-hour mass emission rate, as opposed to monthly or annual average emissions. The Band strongly supports this policy, as the use of monthly or annual average emissions inappropriately smoothes out days with high emission rates and underestimates 24-hour visibility impacts.

To many tribes, the proposals in the revised guidance addressing deposition of nitrogen and sulfur compounds are of great importance. Page 87 of the document states “Because significant ecological changes may occur before nitrate loss can be detected, more sensitive indicators than nitrate leaching are needed to evaluate N deposition efforts”. The Band welcomes this approach. We have long believed that the current deposition evaluation criteria may not have been stringent enough to protect the most sensitive species. However, the section does not give real, concrete information on exactly how the FLMs intend to incorporate these sensitive indicators into its review process.

The guidance also does not address the issue of sulfate deposition and increased mercury methylation. This topic is of great interest to the Band, as increased mercury methylation leads to increased mercury bioaccumulation in fish and, eventually, in humans. The body of information in this area is increasing and we would like to see the latest data used in FLM evaluations of new projects. If the protection of fish tissue from mercury is not an AQRV, the Band hopes the federal agencies will attempt to make it one, and will strive to control sulfate deposition with the goal of controlling methylation. The Band is also very concerned with protecting traditional stands of wild rice found in Minnesota waters. Sulfur deposition to these waters can be very harmful to wild rice, therefore we suggest that the exposure of tribally significant species should be considered when reviewing the effects of new sources of pollution. FLMs should work with local tribes to identify these species and to determine what levels of pollution should be allowed.

Item d. on page 89 discusses the issue of critical loads, as related to Class I air resources. The Band supports the use of this management tool for S and N deposition. As the waters in Northern Minnesota tend to have little buffering capacity, the Band supports the Canadian-recommended S deposition level of 2.7 kg/ha/yr.

On page 95, the document mentions the use of Deposition Analysis Thresholds (“DAT’s”) for nitrogen and sulfur deposition. If a source’s deposition impacts are found to be below the DAT for each nearby Class I area, the impacts are considered negligible, and no further analysis will be required for that pollutant. If a source’s impact is equal to or greater than the DAT, the FLM will make a project-specific impact assessment. The text also explains that “DAT’s are a tool to assess the impact of a single new source...” and that “these levels may not be protective in areas

that are already impaired or where there are multiple new sources impacting a single area". The Band strongly believes that the cumulative effects of various projects, even those whose effects are found to be below the DAT, need to be considered. This is of particular concern in Northern Minnesota at this time, as there are several new and proposed mining projects that could impact the region. The Band urges the FLM's to use critical loads in these instances, either instead of or in addition to DAT's. We also suggest that minor sources be included in calculating critical loads, as emissions from several minor sources could have the same impact as those from one or more major sources. The diagram found on page 97 does not specifically contain any provisions for evaluating cumulative deposition effects from sources whose impacts are below the DAT.

An overall concern is that in many instances, the document states that site-specific information is not available. The Band realizes that FLM funding is limited and we support the FLM's in their attempts to secure additional funding and/or create funding and research partnerships.

Finally, the Band observed that the proposed guidance makes no mention of the use of weighted averages for considered ozone effects on flora and fauna, as the previous guidance did. The N100 (the number of hours the measured concentration is greater than or equal to 0.100 ppm) and W126 (places a greater weight on measured values as the concentrations increase) numbers need to be calculated to best determine the effects of ozone on vegetation. The FLAG 2000 document states that some vegetation species can be more sensitive to the effects of ozone than humans are, and that it can be hard to quantify the relationship between a measured ozone concentration and a vegetation response. The 2000 version also states that "[b]iologically relevant ozone metrics for plant cannot be directly related to, nor can they be calculated from, the 8-hour NAAQS for ozone. The NAAQS ozone metric does not...accumulate exposure". This entire section appears to have been removed from the 2000 version. We ask that the FLMs revisit this decision, as it appears that ozone weighted averages are very important to species protection.

Thank you for this opportunity to comment on this revised document. If you have any questions, please call me at 218-878-8008.

Sincerely,

Joy Wiecks  
Air Quality Technician  
Fond du Lac Resource Management

c.c. Wayne Dupuis, Fond du Lac Environmental Program Manager  
Ben Giwojna, EPA Region V, Air and Radiation Division